

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

January 8, 2014

Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: John Regan, Chairman; Stephen Joyce, Vice-Chairman; Stephen Falvey; Edmund Corcoran, Jr.; Antonio Frias (Ines Leonardo); Todd Johnson; Bernie Mulholland; Dennis Hines; Mike Doheny, General Counsel, Executive Office of Labor and Workforce Development.

Also Present: Philip L. Hillman, Director; George Noel, Deputy Director; Omar Hernandez, Senior Judge; William Taupier, Deputy Director of Administration; Ray Marchand, Director of Investigations; Bob Ford, Budget Director, EOLWD; Mark Joyce, Senior Regional Services Manager; John Reardon, Civil Litigation Manager; Mike Kelley, AIM Mutual; Jim Dunlap, Mass Bay Self-Insurance Group; Tracey Pollard, Atlantic Charter; Stacie Sobosik, The Law Office of Stacie Sobosik; Audrey Richardson, Greater Boston Legal Services.

Advisory Council Staff: William S. Monnin-Browder; Evelyn Flanagan.

Absent: Mickey Long; Teri McHugh; John Pulgini; Bill Corley; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration
- Quarterly Update on FY'14 Initiatives

Action Items

- Minutes – November 13, 2013

Discussion of the Draft FY'13 Annual Report

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman John Regan began the meeting at 9:00 A.M. Chairman Regan asked Senior Judge Omar Hernandez to provide his update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez stated that both the Conference Queue and the Hearing Queue were down. He explained that the average waiting period for conference varied—Fall River and Springfield are at 2.5

months; Lawrence is at 3.5 months; Worcester is at 3 months and Boston is 4 months. He noted that in December, judges from Fall River were brought in to the Boston office to help reduce the queue.

The Senior Judge stated that there are currently 125 doctors on the impartial physician list. He noted that Diane Neelon has brought in more specialties, but that he will continue to monitor the list.

Senior Judge Hernandez informed the Council members that they have posted notices for two judicial positions. He stated that all applications are due by January 17, 2014, after which time the Agency will proceed with its normal review process.

Council member Bernie Mulholland referenced recent news articles involving the Agency and judicial salaries and asked if there was anything the Council could do with regard to the issue. Mr. Mulholland stated that the issue has become very personal for those involved.

Director Phil Hillman explained that the Agency has been quiet on many of the issues because litigation is pending. He indicated, however, that some issues involved are a matter of public record and that people can review the information and draw their own conclusions—conclusions which may differ from what the article said. For example, Director Hillman stated that salaries are a matter of public record. He stated that the highest paid judge is female and the highest paid judge with experience of four years or less is also female. Director Hillman suggested that the article only shows one side of the issue. He indicated that he found the article's suggestion that this is no longer a model agency to be problematic.

Council member Mulholland stated that he told the reporter that the Agency does not need distractions, and instead, everyone should be focused on servicing the employees and employers in the Commonwealth. Mr. Mulholland stated that stakeholders want the best possible judges performing to the best of their ability and are not really concerned with what they are getting paid—but that pay should be equitable. Mr. Mulholland stated that it is never good when we are distracted by things that are not the focus of our goal.

Director Hillman stated that the one thing he would ask the Council is if this problem has impacted the overall performance of the Agency. Director Hillman noted that the DIA is fulfilling its mission as always and will continue to make improvements. He stated that this issue may be a distraction, but it has not impacted the performance of the DIA.

Chairman Regan noted that the Council's focus should be on the overall performance of the Agency. He stated that when he was the head of a state agency, he made some decisions that were questioned by others. The Chairman stated that he understood the Agency's concern that this is a very delicate situation, and, moving forward, the Council should make sure the Agency's mission continues to be carried out.

Council member Steve Falvey expressed frustration that the issue has not been settled. Mr. Falvey stated that he could not believe that this has gone to court and suggested that if personalities are in the way, then maybe they need to get out of the way, so the right thing can be done. Mr. Falvey asked if there was just one case before the MCAD and asked to be informed of actions of this nature moving forward.

General Counsel Tattan informed the Council members that there was one other case before the MCAD brought by another employee.

Director Hillman stated that the charges currently before MCAD involving judicial salaries were made to the Office of Diversity and Equal Employment. He explained that the office conducted a full investigation which included all the parties involved, including Madam Secretary, and the Agency was

completely exonerated from any charges of retaliation or bad behavior. He noted that this is in writing and that it is a matter of public record.

Mr. Regan suggested that Director Hillman provide a copy to pass around to the Council members.

Chairman Regan suggested that to the extent possible, it would be helpful if the Agency continued to keep the Council informed. The Chairman stated that the Council's concern is that the organization not get side tracked and continues to move forward in the appropriate manner.

Vital Statistics

Deputy Director of Administration Taupier updated Council members on the information contained within the DIA's vital statistic report for January 2014. He offered the following statistics: Conference Queue: 833; Hearing Queue: 829; Reviewing Board Inventory: 24; Impartial Exams for FY' 14 (to date): 2,088 (10 waivers); Exam Fees Collected for FY' 14: \$996,225; Impartial Medical Examinations in FY' 13: 4,838 (51 waivers); and Exam Fees Collected in FY' 13: \$1,771,021. He noted that the average wait time for conference currently stands at 8 to 16 weeks.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in December: 162 (19 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 14 (to date): 1,238; fine collection for December: \$50,824; total fines in FY' 14 (to date): \$681,484; SWOs issued in FY' 13: 2,621; total fines collected in FY' 13: \$1,351,266; compliance checks for December 2013: 6,013; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 3,054 (FY' 14).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in December 2013: 847; total cases filed in FY' 14 (to date): 5,901; total cases filed in FY' 13: 12,174; total First Report of Injury Forms (FRI) filed in December 2013: 2,129 (1,129 filed electronically; 53%); total FRI filed in FY' 14: (to date): 15,150; total FRI filed in FY' 13: 29,791 (11,937 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 14 (to date): 49; total amount of §65 claims paid by the Trust Fund in FY' 14 (to date): \$3,961,021; total §65 claims filed in FY' 13: 126; total amount of §65 claims paid by the Trust Fund in FY' 13: \$5,727,787; total recovery efforts against uninsured employers FY' 14: \$273,497; total recovery efforts against uninsured employers FY' 13: \$1,368,849.

Council member Ed Corcoran stated that since Mr. Ronan's involvement with the Trust Fund, it has changed dramatically in a positive way.

General Counsel Bill Tattan explained that Mr. Ronan had brought with him a good set of practices. The General Counsel informed the Council that within the last year Mr. Ronan has done audits on different sets of billings and within that time he spent \$6,300 in doing the audits and the total savings that resulted from those audits was \$58,284.95. The General Counsel explained that this was savings that they would have paid for different reasons but had nothing to do with the compensable injury. He noted that this was a tremendous improvement in operations and that Mr. Ronan was responsible, along with one of the adjusters.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY' 14 (to date): \$12,001,031; total amount paid on these claims in FY' 13: \$26,761,907; total COLA reimbursements to insurers in FY' 14 (to date): \$4,955,948; total COLA reimbursements to insurers in FY' 13: \$15,483,043.

Mr. Taupier reported that as of December 2013, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 245 (190 DIA employees, 55 WCTF employees).

Mr. Taupier stated that the new hire was and Administrative Assistant.

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 14 (to date): \$1,826,139; total referral fees collected in FY' 13: \$3,971,991; total first report fines in FY' 14 (to date): \$48,950; total first report fines in FY' 13: \$55,758; total assessment collections in FY' 14 (to date): \$25,528,720; total assessment collections in FY' 13: \$60,111,617 (Consultant Cost = \$50,000); total SWO fines in FY' 14 (to date): \$681,484; total SWO fines in FY' 13: \$1,351,266.

Mr. Bob Ford noted that with regard to the assessments from the insurance companies, the Agency is using two external audit firms and that they were currently up to the year 2010. He stated that they were expecting to collect about \$200,000. With respect to the FY' 15 budget, Mr. Ford indicated that he does not expect it to be a problem. He added that the Agency is tracking under budget for FY' 14 because staffing levels are down, COLAs are down, and §37s are down.

Mr. Joyce noted that with regards to IT, DUA had received some publicity around issues with their online system. He asked how things were going at DIA, since there is now one IT department at the Secretariat.

Mr. Taupier explained that in a large organization, you will run into challenges, but that the Agency's needs are being met. He noted that over the past few months, the Agency has been in the process of converting all desktop users to Window 7, a process that is almost complete. He explained that the administration meets with the IT Director biweekly to go over issues.

Mr. Joyce asked if IT was getting in the way of the Agency's ability to provide lists of debarred employers that can be shared with A&F, instead of being a separate list as it currently stands. He stated the Secretary of A&F is supposed to have only one debarment list.

Deputy Director of the DIA George Noel stated that he would follow up with the person over at IT.

Chairman Regan explained that the quarterly update on DIA initiatives would be held until the next meeting.

DISCUSSION OF THE DRAFT FY'13 ANNUAL REPORT

Executive Director Will Monnin-Browder indicated that the draft had been updated to reflect the comments made by Council member Mickey Long at the last meeting, regarding the significant decrease to the assessment rate. Mr. Monnin-Browder informed the Council that a sentence noting that the assessment rate for FY' 14 is the lowest since 1995 was added both to the transmittal letter and the body of the report.

EXECUTIVE DIRECTOR UPDATE

Executive Director Will Monnin-Browder stated that David Powell, the contracting representative on the Council had retired and resigned from the Council at the end of December. He stated that Mr. Powell had asked him to convey his best wishes to the Council on its continued interest in oversight in the area of workers' compensation.

The Executive Director stated that Mr. Corcoran had retired, but has agreed to serve out the remainder of his term until May.

Director Hillman stated that there has been some outreach to fill these positions, but they have not received any responses yet. He suggested that if any Council member has any suggestions for the open or soon-to-be-open spots, they should contact him or the Executive Director.

MISCELLANEOUS

Mr. Joyce stated that, although the Annual Report had yet to be approved, he was curious to know if the DIA had any thoughts about doing a press release about the good things that are in the report. Mr. Joyce noted that the product that comes out of the DIA is tremendous and we do not do enough to let others know. He stated that many times, he hears up at the State House how horrible it is to do business in Massachusetts, but, with regard to workers' compensation, it is good to do business in Massachusetts.

Council member Ed Corcoran stated that he could not agree more. He stated that going back to the late 1980s and early 1990s, there were some unpleasant things going on in the Administration with regard to workers' compensation, but that things gradually got better. Mr. Corcoran noted that there are good things to say about the system here in Massachusetts and that this message should be delivered to the public.

Council member Steve Falvey stated that his organization oversees six New England states, so he has a New England perspective on workers' compensation. Mr. Falvey noted that if a worker is going to be injured, Massachusetts is where they would want the accident to occur. Given the level of benefits and the fact that Massachusetts is a high wage state, Mr. Falvey indicated, the fact that the assessment has been reduced by 21% is an accomplishment that ought to be shared.

Meeting Adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, February 12, 2014, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.